



## **DEPARTMENT OF HOMELAND SECURITY**

### **Coast Guard**

### **33 CFR Part 165**

**[Docket Number USCG-2021-0419]**

**RIN 1625-AA00**

**Safety Zone; Charlevoix Venetian Festival Air Show, Lake Charlevoix, MI, Sector**

**Sault Ste. Marie Captain of the Port Zone**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary final rule.

**SUMMARY:** The Coast Guard is establishing a temporary safety zone in the Sault Ste. Marie Captain of the Port zone. This safety zone is intended to restrict vessels from certain portions of Lake Charlevoix, MI during air show activities. The safety zone is needed to protect personnel, vessels, and the marine environment from potential hazards created by the air show. Entry of vessels or persons into this zone is prohibited unless specifically authorized by the Captain of the Port Sault Ste. Marie.

**DATES:** This rule is effective from 9:45p.m. on July 23, 2021 through 10 p.m. on July 23, 2021.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <https://www.regulations.gov>, type USCG-2021-0419 in the “SEARCH” box and click “SEARCH.” Next, in the Document Type column, select “Supporting & Related Material.”

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email LT Deaven Palenzuela, Sector Sault Ste. Marie Waterways Management Division, U.S. Coast Guard; telephone 906-635-3223, email [ssmprevention@uscg.mil](mailto:ssmprevention@uscg.mil).

**SUPPLEMENTARY INFORMATION:**

## **I. Table of Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

## **II. Background Information and Regulatory History**

The Coast Guard is issuing this temporary rule without prior notice and opportunity to comment pursuant to authority under section 4(a) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). This provision authorizes an agency to issue a rule without prior notice and opportunity to comment when the agency for good cause finds that those procedures are “impracticable, unnecessary, or contrary to the public interest.” Under 5 U.S.C. 553(b)(B), the Coast Guard finds that good cause exists for not publishing a notice of proposed rulemaking (NPRM) with respect to this rule because doing so would be impracticable and contrary to the public interest. The Coast Guard received the safety zone request on June 7, 2021. The Coast Guard did not receive the final details of the requested safety zone with sufficient time for a comment period to run before the start of the air show. Delaying this rule to wait for a notice and comment period to run would be impracticable and contrary to the public interest because it would inhibit the Coast Guard’s ability to protect the public from the potential hazards associated with the air show.

Under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making this rule effective less than 30 days after publication in the **Federal Register**. For the same reasons as discussed in the preceding paragraph, a 30 day notice period would be impracticable and contrary to the public interest. It is impracticable to publish an NPRM because we must establish this safety zone by 9:45pm on July 23, 2021 to protect the public from the hazards associated with the air show.

## **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 46 U.S.C. 70034 (previously 33 U.S.C. 1231). The Federal Aviation Administration regulates air shows. This action is only for the safety zone. The Captain of the Port Sault Ste. Marie (COTP) has determined that potential hazards associated with the air show (i.e. noise levels and possible crashing of the aircraft(s)) will be a safety concern for anyone within Lake Charlevoix waters encompassed by a line connecting the following points beginning at 45°19'16" N, 085°14'22" W; thence to 45°19'11" N, 085°13'49" W; thence to 45°18'39" N, 085°13'59" W; thence to 45°18'45" N, 085°14'33" W; and back to the beginning point. This rule is needed to protect personnel, vessels, and the marine environment in the navigable waters within the safety zone during the air show.

#### **IV. Discussion of the Rule**

This rule is necessary to ensure the safety of vessels during the aforementioned air show. The temporary safety zone will encompass all U.S. navigable waters of Lake Charlevoix bounded by a line drawn from 45°19'16" N, 085°14'22" W; thence to 45°19'11" N, 085°13'49" W; thence to 45°18'39" N, 085°13'59" W; thence to 45°18'45" N, 085°14'33" W; and back to the beginning point of origin. The safety zone will be enforced from 9:45p.m. to 10 p.m. on July 23, 2021. Entry into, transiting, or anchoring within the safety zone is prohibited unless authorized by the Captain of the Port, Sault Sainte Marie, or a designated on-scene representative. The Captain of the Port or a designated on-scene representative may be contacted via VHF Channel 16 or telephone at 906-635-3233.

#### **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

##### *A. Regulatory Planning and Review*

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, this rule has not been reviewed by the Office of Management and Budget (OMB).

This regulatory action determination is based on the conclusion that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone created by this rule is confined to area encompassing air show area over water and will be enforced only for the duration of the air show. Under certain conditions, moreover, vessels may still transit through the safety zones when permitted by the Captain of the Port.

#### *B. Impact on Small Entities*

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule.

If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### *C. Collection of Information*

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3520).

#### *D. Federalism and Indian Tribal Governments*

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

#### *E. Unfunded Mandates Reform Act*

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### *F. Environment*

We have analyzed this rule under Department of Homeland Security Directive 023-01, Rev. 1, associated implementing instructions, and Environmental Planning COMDTINST 5090.1 (series), which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321–4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves establishment of a safety zone lasting less than 15 minutes during the air show activities. It is categorically excluded from further review under paragraph L60(a) of Appendix A, Table 1 of DHS Instruction Manual 023–01–001–01, Rev. 1. A Record of Environmental Consideration supporting this determination is available in the docket. For instructions on locating the docket, see the ADDRESSES section of this preamble.

#### *G. Protest Activities*

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to call or email the person listed in the **FOR FURTHER INFORMATION CONTACT** section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### **List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and record keeping

requirements, Security measures, Waterways.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

**PART 165 - REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05-1, 6.04-1, 6.04-6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T09-0419 to read as follows:

**§ 165.T09-0419 Safety Zone; Charlevoix Venetian Festival Air Show, Lake Charlevoix, Michigan.**

(a) *Location.* The following areas are temporary safety zones: All U.S. navigable waters of Lake Charlevoix bounded by a line drawn from 45°19'16" N, 085°14'22" W; thence to 45°19'11" N, 085°13'49" W; thence to 45°18'39" N, 085°13'59" W; thence to 45°18'45" N, 085°14'33" W; and back to the beginning point of origin.

(b) *Enforcement period.* This section will be enforced from 9:45 p.m. through 10 p.m. on July 23, 2021. The section will be enforced during additional times while in effect with actual notice as-needed to mitigate risks associated with the air show.

(c) ***Regulations.*** (1) In accordance with the general regulations in § 165.23, entry into, transiting, or anchoring within these safety zones are prohibited unless authorized by the Captain of the Port, Sault Sainte Marie or his on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port, Sault Sainte Marie or his on-scene representative.

(3) The "on-scene representative" of the Captain of the Port, Sault Sainte Marie is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port, Sault Sainte Marie to act on his or her behalf. The on-scene

representative of the Captain of the Port, Sault Sainte Marie will be aboard a Coast Guard vessel.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port, Sault Sainte Marie, or his on-scene representative to obtain permission to do so. The Captain of the Port, Sault Sainte Marie or his on-scene representative may be contacted via VHF Channel 16 or telephone at 906-635-3233. Vessel operators given permission to enter or operate in the safety zone must comply with all directions given to them by the Captain of the Port, Sault Sainte Marie or his on-scene representative.

Dated: June 11, 2021

A. R. Jones

Captain, U.S. Coast Guard,

Captain of the Port Sault Sainte Marie.

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